

**International Brotherhood of Electrical Workers,
Local 332 and W.S.B. Electric, Inc. Cases 32-
CC-667 and 32-CC-674**

27 March 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 2 September 1983 Administrative Law Judge Earledean V.S. Robbins issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Brotherhood of Electrical Workers, Local 332, San Jose, California, its officers, agents, and representatives, shall take the action set forth in the Order.

¹ In adopting the judge's finding that the Respondent's picketing on 30 December 1982 was unlawful we rely on the fact that such picketing was located at the valid separate gate reserved for neutrals. Therefore we find it unnecessary to pass on the judge's alternative theory that the Respondent failed to take reasonable steps to prevent picketing after it was informed that W.S.B. Electric was no longer at the site.

We note that no exceptions were filed to the allegations dismissed by the judge.

DECISION

STATEMENT OF THE CASE

EARLDEAN V.S. ROBBINS, Administrative Law Judge. This case was heard before me on June 23, 1983. The charge in Case 32-CC-667 was filed by W.S.B. Electric, Inc., herein called W.S.B., and served on International Brotherhood of Electrical Workers, Local 332, herein called the Respondent, on December 29, 1982. The charge in Case 32-CC-674 was filed by W.S.B. and served on the Respondent on January 21, 1983. The consolidated complaint herein issued on January 28, 1983, alleging that the Respondent violated Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended, herein called the Act. The principal issue herein is whether, in a common situs situation, the neutrality of a gate set aside for neutral contractors was sufficiently breached so as to justify the Respondent's subsequent picketing of said gate.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Nielsen, Vasko and Earl, herein called NVE, has been a general contractor at a commercial construction project for the Sunnyvale Water Pollution Control Plant, herein called the jobsite. At all times material herein, W.S.B., and Meddco Metal Co., herein called Meddco, have been engaged as subcontractors by NVE at the jobsite.

W.S.B. is now, and has been at all times material herein, a California corporation with an office and place of business located in Oakland, California, where it is engaged in business as an electrical contractor in the building and construction industry. During the 12 months preceding the issuance of the complaint herein, W.S.B., in the course and conduct of said business operations, purchased and received goods valued in excess of \$50,000 from sellers or suppliers located within the State of California, which sellers or suppliers received such goods in substantially the same form directly from outside the State of California.

The complaint alleges, and I find, that W.S.B. is, and at all times material herein has been, a person and employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(1), (2), (6), and (7) of the Act; and NVE and Meddco each is now, and at all times material herein has been, a person engaged in commerce or in the industry affecting commerce within the meaning of Section 2(1), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the Respondent admits, and I find that the Respondent is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The facts are generally undisputed. The jobsite herein involves an addition to an existing water pollution control facility. NVE is one of three general contractors involved in this project. As well as coordinating the work of its subcontractors at the jobsite, NVE also performs the concrete and rough carpentry portions of the job. NVE has several subcontractors including W.S.B., a nonunion electrical subcontractor. The Respondent admits that it had no dispute with any contractor at the jobsite other than W.S.B.

At some point prior to September 29, 1982, the Respondent determined that W.S.B. was not paying its employees the area wage and benefits standards and, on

September 29, 1982,¹ notified W.S.B. by mailgram of its intent to picket W.S.B. to publicize its failure to meet area standards. On October 6, the Respondent commenced picketing the jobsite at the corner of Borregas and Caribbean Avenues. On October 7 NVE established a reserve gate system. A gate was reserved for the exclusive use of W.S.B., its employees, and suppliers on Borregas Avenue north of Caribbean Avenue, herein called W.S.B. gate B. A separate gate was reserved for NVE and other neutral subcontractors at the corner of Borregas Avenue and Carl Road, herein called NVE gate A. It is undisputed that the gates were properly posted. Picketing continued at the W.S.B. gate without incident, as to use of the gates, until December 27. The matter herein involves incidents which occurred on December 27-30 and on January 20.

The factual circumstances of what occurred on those dates are largely undisputed. The parties stipulated that on December 27, 1982, Henry Pearson and Al Guzman commenced picketing at the W.S.B. gate, at 6 a.m. At 6:45 a.m., a W.S.B. employee on a black Honda motorcycle approached W.S.B. gate and determined that it was locked, whereupon he proceeded down the road to the NVE gate A and entered the jobsite through that gate.² At 8:15 a.m., Henry Pearson and Jim Evans, the Respondent's business representative in charge of the picketing at the jobsite, drove onto the jobsite and observed the same black Honda motorcycle parked in W.S.B.'s lot on the jobsite. At 8:30 a.m., Jim Evans directed the pickets to move to the NVE gate A.³ Al Guzman remained at the W.S.B. gate B as an observer. At approximately 10:30 a.m., Jim Evans and Henry Pearson again entered the jobsite and determined that the Honda motorcycle was gone from the W.S.B. parking lot. However, it had not exited through the W.S.B. gate. The picketing continued at the NVE gate A from 8:30 a.m. until 3:30 p.m. that day, with picket signs which read:

AFL-CIO
PICKET
SANCTIONED BY
SANTA CLARA, SAN BENITO AND
SANTA CRUZ COUNTIES
BUILDING TRADES COUNCIL
WSB ELECTRIC
DOES NOT OBSERVE WAGES, FRINGE
BENEFITS
AND WORKING CONDITIONS ENJOYED IN
THIS
AREA BY ELECTRICIANS
I.B.E.W. 332⁴

On the afternoon of December 27, NVE sent a mailgram which was received by the Respondent at 5:15 p.m., the body of which reads:

RE SUNNYVALE WATER POLLUTION CONTROL PLANT

EFFECTIVE AT STARTING TIME ON TUESDAY, DECEMBER 28, 1982 A DUAL GATE ENTRANCE SYSTEM HAS BEEN RE-ESTABLISHED AT OUR PROJECT REFERENCED ABOVE LOCATED AT CARIBBEAN DRIVE AND BORREGAS AVENUE.

GATE "A" [the NVE gate A] FOR THE EXCLUSIVE USE OF EMPLOYEES, SUBCONTRACTORS AND MATERIAL SUPPLIERS OF NIELSEN VASKO AND EARL IS ALONG BORREGAS AVENUE AT THE INTERSECTION OF CARL ROAD.

GATE "B" [the W.S.B. gate B] FOR THE EXCLUSIVE USE OF THE EMPLOYEES AND MATERIAL SUPPLIERS OF WSB ELECTRIC IS ON THE EAST SIDE OF BORREGAS AVENUE AT THE GRAVEL ROAD JUST NORTH OF CARIBBEAN AVENUE.

FAILURE ON YOUR PART TO LIMIT PICKETING TO THAT ENTRANCE WILL CAUSE NIELSEN VASKO AND EARL TO PURSUE ITS RIGHTS TO THE FULLEST EXTENT PERMITTED BY LAW THROUGH THE NATIONAL LABOR RELATIONS BOARD.

On December 28, 1982, Al Guzman and Henry Pearson started picketing on NVE gate A at 6 a.m. At 6:45 a.m., Jim Evans moved them back to W.S.B. gate B. At 10:55 a.m., Guzman and Pearson observed a Viking shipping truck enter the jobsite through W.S.B. gate B and the W.S.B. employees unloading electrical materials from the Viking truck. The truck then exited the jobsite at 11:35 a.m. through NVE gate A. The same truck then proceeded to the W.S.B. gate B, whereupon the truckdriver told Guzman and Pearson that he had made deliveries to W.S.B. At 2:30 p.m., Jim Evans told the pickets to move to the NVE gate, where they stayed until 4 p.m.

¹ All dates herein in September through December will be in 1982 and in January will be in 1983 unless otherwise indicated.

² The parties stipulated that if called to testify, they would testify that the employee had been transferred from the jobsite to another work location, had entered the jobsite to obtain his tools, and that he left the jobsite before 10:30 a.m.

³ Evans testified that upon observing the motorcycle in the W.S.B. yard on the jobsite, he determined that the reserve gate had been violated.

⁴ The parties stipulated that the same language appeared on the picket signs used on December 27-30 and January 20.

Shortly after the pickets left for the day, NVE sent the Respondent a mailgram, the body of which reads:

EFFECTIVE AT STARTING TIME ON WEDNESDAY DECEMBER 29, 1982 A DUAL GATE ENTRANCE SYSTEM HAS BEEN RE-ESTABLISHED AT OUR PROJECT REFERENCED ABOVE LOCATED AT CARIBBEAN DRIVE AND BORREGAS AVENUE.

GATE "A" [the NVE gate A] FOR THE EXCLUSIVE USE OF EMPLOYEES SUBCONTRACTORS AND MATERIAL SUPPLIERS OF NIELSEN VASKO AND EARL IS ALONG BORREGAS AVENUE AT THE INTERSECTION OF CARL ROAD.

GATE "B" [the W.S.B. gate B] FOR THE EXCLUSIVE USE OF THE EMPLOYEES AND MATERIAL SUPPLIERS OF WSB ELECTRIC IS ON THE EAST SIDE OF BORREGAS AVENUE AT THE GRAVEL ROAD JUST NORTH OF CARIBBEAN AVENUE.

FAILURE ON YOUR PART TO LIMIT PICKETING TO THAT ENTRANCE WILL CAUSE NIELSEN VASKO AND EARL TO PURSUE ITS RIGHTS TO THE FULLEST EXTENT PERMITTED BY LAW THROUGH THE NATIONAL LABOR RELATIONS BOARD.

On December 29, the Respondent continued to picket to NVE gate. At 12:08 p.m. on December 29, the Respondent sent a mailgram to NVE, the body of which reads:

WSB AND THEIR SUPPLIERS HAVE VIOLATED THE DUAL GATE SYSTEM YOU ESTABLISHED AT THE SUNNYVALE WATER POLLUTION CONTROL PLANT ON TWO DIFFERENT OCCASIONS THIS WEEK: 6:45 AM ON DECEMBER 27, 1982, AND 11:35 AM ON DECEMBER 28, 1982. WE FEEL THAT YOUR DUAL GATE SYSTEM IS NO LONGER VALID. THEREFORE, IBEW LOCAL 332 WILL PICKET ACCORDINGLY.

At 4:17 p.m. on December 29, a mailgram was delivered to the Respondent from NVE, the body of which reads:

BE ADVISED THAT YOUR PICKETING AT THE NIELSEN-VASCO WASTE WATER TREATMENT PLANT IN SUNNYVALE IS ILLEGAL. WSB ELECTRIC IS NOT PERFORMING WORK OR RECEIVING SUPPLIES AT THE JOBSITE ON THIS DATE AND WILL NOT BE ON THE SITE UNTIL FURTHER NOTICE. IN ADDITION, ALL PERSONNEL AND SUPPLIERS OF WSB HAVE BEEN REINSTRUCTED TO USE GATE B [the W.S.B. gate B] ONLY WHEN THEY ARE AT THE JOB. SINCE THE RESERVED GATES ARE RE-ESTABLISHED AND SINCE WSB IS NOT ON THE JOBSITE, YOUR CONTINUED PICK-

ETING AT GATE A [the NVE gate] IS ALSO ILLEGAL. CHARGES HAVE BEEN FILED WITH THE NLRB.

Evans testified that until he personally received NVE's mailgram on the morning of December 30, he had no knowledge that W.S.B. was not on the jobsite on December 29. According to him, as soon as possible, he drove to the jobsite and instructed picket Henry Pearson to observe only and to remove the picket signs; whereupon, about 9:30 a.m., Pearson placed the picket signs in his truck so they were not visible.⁵

It is undisputed that it cannot always readily be determined from the gate whether W.S.B. is on the jobsite. It is also undisputed that the December 29 telegram was the first notification, either in writing or orally, to the Union that W.S.B. would not be on the jobsite. It is further undisputed that on December 29 NVE had to cancel a delivery of concrete because the NVE gate A was being picketed.

Evans testified that on January 18 John Stone, who was picketing at the W.S.B. gate B that day along with Pearson and Al Fuentes, informed him that he saw a W.S.B. employee exit out of the W.S.B. gate, drive up to the NVE gate, get out of his truck, and enter through NVE gate A, and then exit through the NVE gate a approximately 30 minutes later. Nevertheless, Evans did not instruct the pickets to commence picketing NVE gate A since he had been informed that some pollutions of a reserved gate system might be considered incidental.

In order to accommodate a delivery of equipment that was too large for the access road at W.S.B. gate B, NVE made arrangements with Boutiff, another general contractor on the jobsite, for W.S.B. to share a common primary gate with Boutiff for 1 day, January 20. On January 18, NVE sent a mailgram to the Respondent, the body of which reads:

GENTLEMEN, WSB ELECTRIC INC ITS SUPPLIERS SUBCONTRACTING AND EMPLOYEES WILL BE USING A SECOND RESERVE GATE IN ADDITION TO THAT ALREADY ESTABLISHED ON THURSDAY JANUARY 20, 1983. THIS SECOND GATE IS LOCATED ON THE LEFT SIDE OF DORRAGES [sic] AVENUE BETWEEN THE CARL SWENSEN COMPANY GATE AND THE NIELSEN VASKO AND EARLY COMPANY GATE.

On January 20, W.S.B. sent a telephone to the Respondent, the body of which reads:

THE SECOND RESERVE GATE USED BY WSB ELECTRIC AS REFERRED TO IN OUR TELEGRAM OF JANUARY 18, 1983 WILL ONLY BE USED ON JANUARY 20, 1983. WE

⁵ Gary Mattern, NVE project superintendent at the jobsite, testified that during the early afternoon that day he saw picket signs standing in a flatbed truck. The record does not indicate whether the legend on the signs was visible. Mattern further testified that after 9:30 a.m., when the Respondent's observer was stationed at the NVE gate A, a truck was parked near the NVE gate, alongside Borregas Avenue, with a picket sign placed on its bumper.

**WILL BE USING ONLY THE ORIGINALLY
ESTABLISHED RESERVE GATE BEYOND
THAT DATE UNTIL FURTHER NOTICE.**

On the evening of January 19, Evans informed Pearson that the gate system had been changed and instructed him not to commence picketing until Evans arrived on the jobsite. Evans arrived at the jobsite on January 20 at 6:15 a.m. and gave the pickets instructions regarding the picketing of the Boutiff gate 1, which is located about 1 foot to the left of NVE gate A. The access road to the NVE gate A is paved. Access to the Boutiff gate 1 is unpaved. It is undisputed that on January 20 the access road to the Boutiff gate 1 was muddy, with a lot of puddles. According to Evans, he instructed the pickets not to walk across the NVE gate, but to stay on the pavement to the left of that gate, walking parallel with Borregas Avenue.

Gary Mattern, the project superintendent for NVE, testified that when he arrived at the jobsite between 6:30 and 7 a.m. on January 20 he observed the pickets generally picketing the Boutiff gate but encroaching across approximately one-third of the access to NVE gate A and turning around and walking back across the NVE gate A. He asked the picket if they were picketing NVE gate A. After they informed him they were not doing so, he erected a wooden rail running for 8 or 10 feet parallel to Borregas Avenue between the Boutiff gate No. 1 and NVE gate A. The gates are no more than a foot apart. Notwithstanding this barrier, according to Mattern, the pickets walked around in front of the rail barrier onto Borregas Avenue in front of NVE gate A. Mattern admits that they did not come out very far in front of NVE gate A but testified that if someone were driving into the NVE gate, the pickets would take their picket signs and hold them straight out from the body at a 45-degree angle out into Borregas Avenue, the access road to NVE gate A. According to Mattern, they were getting up to 6 to 8 feet in front of NVE gate A.

Mattern further testified that when he was erecting the barrier, Evans came up to him and inquired what he was doing. Mattern said he was nailing up the barrier to distinguish between the Boutiff gate 1 and NVE gate A because the pickets seemed to be confused as to where one stopped and the other started. Evans said something indicating that it was muddy and further said that someone from W.S.B. had already contaminated the gate and that if he felt like it he could even picket at NVE gate A. Mattern said, "I don't believe W.S.B. came through this gate." Evans asked, "are you calling me a liar." Mattern said, "No, I am not calling you a liar but if W.S.B. had come through this gate, you would be picketing both gates." Evans said something indicating that he would give them the benefit of the doubt.

Evans testified that when Mattern was erecting the barrier, Mattern said the pickets were violating NVE gate A. Evans denied this, stating that it was muddy. Evans told Mattern that a tan Mazda coupe had gone through NVE gate A that day and that when Evans walked back to the W.S.B. yard to check, the tan Mazda was there and was fairly clean and free of mud. Mattern said this was not true, that if it were true, Evans would

be picketing NVE gate A. Evans said he did not choose to picket NVE gate A at that time. Mattern said the pickets were violating the gate. Evans said they were not, that they were walking as close as they could and remain out of the mud. Later that day, a foreman for one of NVE's other subcontractors parked his truck and queried Evans as to what they were doing. He later returned with Mattern and asked Evans, in his presence, which gate the Union was picketing. When Evans replied that they were picketing Boutiff gate 1, Mattern asked if the Union were picketing NVE gate A. Evans said no, and Mattern and the foreman left.

Mattern testified that he does not recall a conversation with Evans on January 20 in which Evans said they would be picketing along the pavement closest to the mud. He does vaguely recall having a conversation with one of the pickets about them walking out onto Borregas Avenue, picketing NVE gate A, during which one of the pickets said, "It's muddy over there." He further testified that he did check with the W.S.B. foreman about the tan Mazda and the foreman said that they had not entered through Gate A and showed him the tracks where they had come through the mud.

Pearson testified that on January 20 he held his picket sign on his shoulder and he does not recall at any time on that day holding a picket sign vertically out across Borregas Avenue. He also testified that when Mattern was erecting the barrier, he told the pickets he wanted them to picket across by the mud and keep away from NVE gate A. Mattern said they could picket up to the barrier. Thereafter, according to Pearson, they picketed back and forth in a line parallel to Borregas, extending about 20 or 25 feet from the end of the barrier. Pearson also testified that at some point during the day he obtained some boards which he placed across the mud from the barrier to the sign at the Boutiff gate and the pickets walked on those planks.

According to Pearson, when they commenced picketing that day, Evans instructed them to walk on the edge of the pavement and to stay as close to the mud side as possible. He admits that on occasion when pickets met in their patrolling, one would have to step out onto Borregas Avenue. Pearson further testified that when he was on duty at the Boutiff gate 1 on January 20 he observed a tan Mazda driven by a W.S.B. electrician enter NVE gate A, and he so informed Evans.

Stone testified that on January 20 he was under specific directions from Evans as to where to picket, that they were directed to picket from the rail barrier out parallel with Borregas Avenue, and that they were specifically instructed not to picket in front of gate A. He also denies that he ever held his picket sign straight out across Borregas Avenue. He admits, as did Pearson, that he did tie a picket sign to the rail barrier but that Mattern told him to remove it since it was facing the street. Whereupon, he changed the sign so that it was not facing Borregas Avenue but was horizontal to the street so that the sign could be read by someone coming down the street going towards the jobsite. He also admits that in order to turn around the pickets had to walk on Borregas Avenue in order to stay out of the mud.

CONCLUSIONS

Section 8(b)(4)(i) and (ii)(B) states in pertinent part that it is an unfair labor practice for a labor organization or its agents:

(i) . . . to induce or encourage any individual employed by any person . . . to engage in a strike . . . or (ii) to threaten, coerce, or restrain any person . . . where in either case an object thereof is:

. . . .

(B) forcing or requiring any person . . . to cease doing business with any other person . . . *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, any . . . primary picketing.

These provisions implement "the dual Congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own." *NLRB v. Denver Building Trades Council*, 341 U.S. 675, 692 (1951); see *National Woodwork Manufacturers v. NLRB*, 386 U.S. 612, 620-627 (1967).

Thus, a union picketing at a "common situs," where both the primary and neutral secondary employers are working is obligated to make every reasonable effort to minimize the impact of its picketing on neutral employers. *NLRB v. Electrical Workers IBEW Local 429*, 425 F.2d 385, 391 (6th Cir. 1970), *Teamsters Local 126 (Ready Mix Concrete)*, 200 NLRB 253, 256 (1972). In distinguishing between legitimate primary activity and banned secondary activity at a common situs, the Board in *Sailors Union (Moore Dry Dock)*, 92 NLRB 547, 549 (1950), has articulated the following criteria:

[P]icketing . . . is primary if it meets the following conditions: (a) The picketing is strictly limited to times when the *situs* of the dispute is located on the secondary employer's premises; (b) at the time of the picketing the primary employer is engaged in its normal business on the *situs*; (c) the picketing is limited to places reasonably close to the location of the *situs*; and (d) the picketing discloses clearly that the dispute is with the primary employer.

However, these criteria may not be applied in a mechanistic fashion so as to establish per se violations. Rather they are to be used as evidentiary aids in determining the true object of picketing. Thus, failure to comply with any one of the *Moore Dry Dock* criteria creates a strong, though rebuttable, presumption that the picketing had an unlawful secondary purpose. *Ramey Construction Co. v. Painters Local 544*, 472 F.2d 1127, 1132 (5th Cir. 1972); *NLRB v. Northern California District (Joseph's Landscaping)*, 389 F.2d 721, 725 (9th Cir. 1968), *enfg.* 154 NLRB 1384 (1965).

In minimizing the impact of picketing on neutral employees in a common situs construction project, the situs of a union's dispute with a primary employer may be localized by the establishment of a separate gate or entrance reserved for the exclusive use of the employees

and suppliers of the primary employer. Picketing not confined to an area reasonably close to such reserved gate is considered to be in pursuance of unlawful secondary objectives. *Carpenters Local 470 v. NLRB*, 564 F.2d 1360, 1363 (9th Cir. 1977); *enfd. sub nom. NLRB v. Nashville Building Trades Council*, 383 F.2d 562, 564-565 (6th Cir. 1967); *Building Trades Council New Orleans*, 155 NLRB 319, 326 (1965), *enfd. sub nom. Markwell & Hartz, Inc. v. NLRB*, 387 F.2d 79, 81 (5th Cir. 1967), *cert. denied* 391 U.S. 914 (1968).

A reserved gate system may be voted by use of the reserved neutral gate by the primary employer or its suppliers. Thus, frequent breach of the neutrality of such a reserved gate will justify picketing of the neutral gate. *Electrical Workers IBEW Local 323 (J.F. Hoff Electric Co.)*, 241 NLRB 694 (1979). However, "isolated occurrences" which do not establish "a pattern of destruction" of the reserved gate system do not justify picketing at a neutral gate. *Plumbers Local 48 (Calvert General Contractors)*, 249 NLRB 1183 *fn.* 2 (1980); *Electrical Workers IBEW Local (Kelley Electric)*, 216 NLRB 149 (1975). Further, once breached, a neutral reserved gate may be reestablished so that the gate may "still be protected from secondary picketing so long as the revised system is honored and the labor organization involved is notified of the revision." *Carpenters Local 470 (Mueller-Anderson)*, 224 NLRB 315, 316 (1976).

The Respondent contends that NVE lost its neutral status by supplying employees to work on a W.S.B. compressor doing demolition work normally performed by W.S.B. employees and that, therefore, picketing of NVE gate A all times herein was lawful. The use of common equipment is insufficient by itself to establish an ally relationship. It is uncontradicted on the records that NVE was using the compressor to perform some demolition work pursuant to its agreement with W.S.B. and that this type of arrangement was not unusual in the construction industry. There is no evidence that W.S.B. ever contracted to perform this work. Thus, it cannot be concluded that NVE was performing the struck work of W.S.B. Further, NVE and W.S.B. have no common ownership or management. In these circumstances, I find that the record does not support a conclusion that an ally relationship existed between NVE and W.S.B. *Sacramento Area District Council*, 244 NLRB 890 (1979). Thus, the critical issue here is whether the Respondent's picketing was designed to enmesh NVE and other neutrals into its controversy with W.S.B.

Applying the principles outlined above to the circumstances herein, I find that a pattern of destruction of the reserved gate system which would justify picketing the neutral gate was not established either separately or collectively by (1) the December 27 incident when a W.S.B. employee, who had been transferred to another location, upon determining that W.S.B. gate B was locked, entered the jobsite to pick up his tools or (2) the single incident on December 28 of W.S.B. supplier, who had properly entered through W.S.B. gate B, exiting through NVE gate A. Accordingly, I find that by picketing NVE gate A, the Respondent engaged in unlawful secondary picketing on December 27, 28, 29, and 30.

The General Counsel argues that the picketing of December 29 and 30 was also unlawful because W.S.B. was not working at the jobsite. I find no merit in this argument as to December 29. The Respondent was not notified of W.S.B.'s absence from the jobsite until 4:17 p.m. on December 29 and there is no evidence in the record to support a conclusion that the pickets should have been able to observe such absence. However, the picketing continued on December 30. The fact that Evans may not have personally learned of the December 20 mailgram until the morning of December 30 did not relieve the Respondent of its obligation not to picket when W.S.B. was not working at the jobsite. Accordingly, I find that the December 30 picketing was also unlawful because the primary employer was not engaged in its normal business on the jobsite and the Respondent had knowledge of that fact yet failed to take reasonable steps prior to the commencement of picketing on that day to notify Pearson not to picket.

The General Counsel argues that on January 20, the Respondent refused to confine its picketing to Boutiff gate 1, but also picketed NVE gate A by walking about "one-third" of the way across Borregas Avenue, the entrance to NVE gate A, and waving their signs at vehicles approaching NVE gate A. I do not credit Mattern that when trucks approached, the pickets would reach their signs out into Borregas Avenue. In this regard, both Pearson and Stone denied that they waved picket signs in front of NVE gate A. Mattern first testified "if somebody was driving in, they'd take their picket sign and stick it . . . straight out, maybe about a 45-degree angle. When questioned again as to what the pickets did he testified, "again, they'd wave their signs. They would stand . . . right on the edge of that wooden rail and reach their sign out into Borregas Avenue." However, the only photograph of the picketing that day which was submitted into evidence shows signs being carried in a manner better described by his first account.

As set forth above, Section 8(b)(4)(B) has the dual objective of permitting union sanctions aimed at the primary employer while shielding neutral employers from pressures in controversies not their own. Here the reserved gate system in effect on January 20 made the realization of both objectives extremely difficult. NVE and W.S.B. chose to place a primary gate immediately adjacent to the neutral gate. Given the muddy condition of the access road to Boutiff gate 1, I cannot conclude that by walking on the edge of the paved area and straying further onto Borregas Avenue for the purpose of passing or turning around that the picketing had an unlawful object. I further find nothing significant in the manner in which the picket signs were carried. Accordingly, I find that the Respondent did not engage in unlawful secondary picketing on January 20.

CONCLUSIONS OF LAW

1. W.S.B. Electric, Inc. is an employer and person engaged in commerce and in a business affecting commerce within the meaning of Section 2(1), (2), (6), and (7) and Section 8(b)(4)(B) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. By picketing on December 27, 28, 29, and 30 at a gate reserved solely for NVE and other subcontractors with whom the Respondent has no dispute, in furtherance of a dispute with W.S.B., the Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act.

4. The foregoing unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that United Brotherhood of Carpenters and Joiners of America, AFL-CIO, International Brotherhood of Electrical Workers, Local 332, has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend that it be ordered to cease and desist therefrom and that it take such affirmative action as will effectuate the purposes of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommendation⁶

ORDER

The Respondent, International Brotherhood of Electrical Workers, Local 332, San Jose California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Engaging in or inducing or encouraging any individual employed by Nielsen, Vasko and Earl and its subcontractors on the Sunnyvale Water Pollution Control Plant jobsite or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of his employment, to use, manufacture, process, transport, or otherwise handle or work on any articles, materials, or commodities, or to refuse to perform any other services where an object thereof is to force or require that person or Nielsen, Vasko and Earl to cease using, handling, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with W.S.B. Electric, Inc., and with each other at the Sunnyvale Water Pollution Control Plant jobsite.

(b) Threatening, coercing, or restraining Nielsen, Vasko and Earl and its subcontractors on the Sunnyvale Water Pollution Control Plant jobsite or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or to require that person, or Nielsen, Vasko and Earl to cease doing business with W.S.B. Electric, Inc., and with each other at the Sunnyvale Water Pollution Control Plant jobsite.

2. Take the following affirmative action which is necessary to effectuate the purposes of the Act.

⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 32, enough signed copies of the aforesaid notice for posting by W.S.B. Electric and Nielsen, Vasko and Earl and its subcontractors on the Sunnyvale Water Pollution Control Plant jobsite, if they are willing, in places where notice to their employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁷ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT, nor will our officers, business representatives, business agents, or anyone acting for us, whatever his title may be, induce or encourage any individual employed by Nielsen, Vasko and Earl, and its subcontractors in the Sunnyvale Water Pollution Control Plant jobsite, or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of his employment, to use, manufacture, process, transport, or otherwise handle or work on any articles, materials, or commodities, or to refuse to perform any other services where an object thereof is to force or require that person, or Nielsen, Vasko and Earl, to cease using, handling, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with W.S.B. Electric, Inc., and with each other, at the Sunnyvale Water Pollution Control Plant jobsite.

WE WILL NOT threaten, coerce, or restrain Nielsen, Vasko and Earl, and its subcontractors on the Sunnyvale Water Pollution Control Plant jobsite, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or to require that person, or Nielsen, Vasko and Earl to cease doing business with W.S.B. Electric, Inc., and with each other, at the Sunnyvale Water Pollution Control Plant jobsite.

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